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PART III

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

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MIGRATORY BIRD HUNTING

Seasons, Shooting Hours, Bag Limits, and Possession of Certain Ducks in Arizona, New Mexico, and Texas

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 20—MIGRATORY BIRD HUNTING

Seasons, Shooting Hours, Bag Limits, and Possession of Certain Ducks in Portions of Arizona, New Mexico, and Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This document supplements final rulemaking published in the FEDERAL REGISTER on September 29, 1977, and establishes duck hunting seasons, shooting hours, and bag and possession limits for ducks in portions of west Texas, southern New Mexico, and southeastern Arizona. These additional regulations allow the hunting of certain ducks in areas not previously opened to duck hunting, and respond to a Court Order entered in litigation pending before the U.S. District Court for the Western District of Texas, El Paso Division.

EFFECTIVE DATE: November 21, 1977.

FOR FURTHER INFORMATION CONTACT:

John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, 202-343-8827.

SUPPLEMENTARY INFORMATION: Dr. John P. Rogers is also the principal author of this document. Final regulations allowing the hunting of waterfowl in the United States during late seasons were published in the FEDERAL REGISTER dated September 29, 1977 (42 FR 51587), and took effect immediately. All hunting of migratory game birds is prohibited unless open seasons are specifically provided. No duck hunting seasons were provided for designated portions of Arizona and New Mexico in the Pacific Flyway (42 FR 51598), and portions of New Mexico and Texas in the Central Flyway (42 FR 51596). Furthermore, no hunting was permitted for Mexican ducks in either flyway, as indicated on the same pages. The foregoing regulations were to give further protection to the Mexican Duck (Anas diazi), a species designated under the Endangered Species Act of 1973 as "endangered." The decision to implement regulations for the protection of the Mexican duck was premised upon consultation under Section 7 of the Act, which is described in detail in FEDERAL REGISTERS dated July 22, 1977 (42 FR 37554), September 9, 1977 (42 FR 45313), and September 29, 1977 (42 FR 51588).

On September 29, 1977, civil suit was brought by Chester Connor and the El Paso Coalition of Sportsmen in U.S. District Court for the Western District of Texas, El Paso Division, challenging the duck hunting regulations as they related to portions of Texas, New Mexico and Arizona. The suit, naming as defendants the Secretary of the Interior, Director of the U.S. Fish and Wildlife Service, and Director, Texas Parks and Wildlife Department, alleged that the regulations not opening a duck hunting season in portions of Texas, New Mexico, and Arizona were invalid because they were arbitrary and capricious. A hearing was held on plaintiffs' Motion for Preliminary Injunction on October 19, 1977; on November 7, 1977, Judge John H. Wood, Jr., granted plaintiffs' motion. During the pendency of action, the injunction enjoins the U.S. Fish and Wildlife Service from enforcing the regulations frameworks published on September 9, 1977 (42 FR 45318), insofar as those regulations prohibit the hunting of ducks in parts of Texas, Arizona, and New Mexico. The Service is further ordered by the Court to promulgate emergency regulations, which would allow 8 weeks of duck hunting in the areas where no hunting had been previously allowed, incorporating such measures as are deemed necessary for the protection of the Mexican duck, taking into consideration other Federal acts, including the Endangered Species Act of 1973. Such regulations are to be promulgated no later than November 21, 1977. The Court Order makes publication of a proposed rule and the solicitation of comments thereon impracticable and provides good cause for these regulations to take effect upon publication pursuant to 5 U.S.C. § 553 (b) and (d). These regulations provide for the protection of the endangered Mexican duck to the extent allowed by the Court Order.

It should be noted that the litigation which prompted this rulemaking is still pending before the U.S. District Court for the Western District of Texas. Further developments in that litigation may necessitate changes in the late season migratory bird hunting regulations as amended by this rulemaking.

REGULATIONS PROMULGATION: Accordingly, 50 CFR 20.105(d) published in the FEDERAL REGISTER dated September 29, 1977 (42 FR 51596) is amended as shown below.

CENTRAL FLYWAY

1. The second paragraph under Central Flyway is amended to read as follows:

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise noted.

2. In the second sentence under Flywaywide Restrictions, the wording "In order to provide greater protection to the endangered Mexican duck, all duck hunting is prohibited in the following areas:" is deleted and is replaced with:

A limited duck hunting season, which takes into consideration the need for protection of the endangered Mexican duck, is established in the following areas:

3. Under Flywaywide Restrictions, after the last sentence of the paragraph describing the areas in New Mexico in which duck hunting was not allowed, the following wording is added after "Catron County":

In the above areas duck hunting is allowed during November 28, 1977, through January 22, 1978, dates inclusive, only during the hours extending from sunrise to sunset. Point system daily bag and possession limits apply except that no Mexican ducks or female mallards may be taken or possessed.

4. Under Flywaywide Restrictions, after the last sentence of the paragraph describing areas in Texas in which duck hunting is not allowed, the following wording is added after "Rio Grande":

In the above areas duck hunting is allowed during November 28, 1977, through January 22, 1978, dates inclusive, only during the hours extending from sunrise to sunset. Point system daily bag and possession limits apply except that no Mexican ducks or female mallards may be taken or possessed.

5. The text for footnote 1 in the table for the Central Flyway is deleted and is replaced with:

See special duck hunting seasons described under Flywaywide Restrictions, Mexican ducks.

PACIFIC FLYWAY

6. The second paragraph under Pacific Flyway is amended to read as follows:

Shooting hours: One-half hour before sunrise to sunset daily except as otherwise noted.

7. In the first paragraph under Flywaywide Restrictions, the wording "In order to provide greater protection to the endangered Mexican duck, all duck hunting is prohibited in" is deleted and is replaced with:

A limited duck hunting season, which takes into consideration the need for protection of the endangered Mexican duck, is established in the following areas:

8. The first paragraph under Flyway Restrictions is further amended by adding the following after "U.S.-Mexican border":

In the above areas duck hunting is allowed during November 28, 1977, through January 22, 1978, dates inclusive, only during the hours extending from sunrise to sunset. Daily bag limits of 7 ducks, and possession limits of 14 ducks, apply, except that no Mexican ducks or female mallards may be taken or possessed.

9. The text for footnote 1 in the table for the Pacific Flyway is deleted and is replaced with:

See special duck hunting seasons described under Flywaywide Restrictions, Mexican ducks.

ECONOMIC IMPACT REVIEW

(The Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.)

Dated: November 18, 1977.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

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